Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
Number Resource Optimization	)	CC Docket No. 99-200
Telephone Number Portability	)	CC Docket No. 95-116
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To: The Commissioner

COMMENTS OF BBG COMMUNICATIONS, INC.

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The following Comments are submitted on behalf of BBG Communications, Inc. ("BBG"), a telecommunications carrier operating under Section 214 of the Communications Act of 1934, as amended, and headquartered in San Diego, California. BBG, primarily an international telecommunications carrier, currently is exempted from paying a portion of the fees associated with the universal service support programs.

I. Introduction

This proceeding addresses the assessment on telecommunications carriers of universal service contributions. In connection therewith, the FCC seeks comments on, among other related issues, whether to base contributions not on a contributor's revenues, but on the number and capacity of the connections it provides to a public network. See *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43, para. 2 (released February 26, 2002). Currently, under 47 CFR 54.706(c), regardless of the number of connections, a telecommunications carrier is not required to contribute based on its international end-user revenues (although it is still required to contribute on the basis of its interstate revenues) if its interstate end-user revenues are less than 8%[1] (the "Threshold") of its combined international and interstate end-user revenues.[2] BBG currently falls within such exception because it has zero interstate end-user telecommunications revenues. It is, therefore, of great concern to BBG that the proposed reforms will significantly modify the international revenue exception to contribution requirements relied on by BBG and other telecommunications carriers with a high ratio

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[1] Such 8% threshold, according to the *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43, para. 125 (released February 26, 2002), shall be increased to 12% in the second quarter of 2002.

[2] This exception was enacted based on the decision of the United States Court of Appeals for the Fifth Circuit that the Section 254(d) requirement for equitable and nondiscriminatory contributions meant that the Commission could not require contributions greater than interstate revenues. See Texas Office of Public Utility Counsel v. FCC, 183 F.3d. 393, 424-435 (5th Cir. 1999), cert. denied, 2000 WL 684656 (2000).

of international to interstate end-user telecommunications revenues, such that the reforms will result in BBG and other like carriers contributing more than their interstate revenues.

BBG will comment herein on the above requests.

II. Comments on Creating a Flat Fee Contribution

By modifying the contribution requirements so that each carrier provides a flat-fee based on the number of connections, it appears that each carrier, regardless of the service they provide will be charged for a connection. However, because "the amount of the per connection charge would be the same regardless of the level of interstate revenue or traffic associated with a given line," See *Notice of Proposed Rulemaking*, FCC 01-145, supra, at para. 25, the result is neither equitable or nondiscriminatory.

There are a number of overriding principles embodied in the Telecommunications Act of 1996 and in the FCC's rules for assessing universal service contributions. See 47 C.F.R. 254(d). The most important is that contributions are equitable and nondiscriminatory. See id. Adhering to the principle that universal service contributions should be on an equitable and nondiscriminatory basis, the Fifth Circuit held in Office of Public Utility Counsel v. F.C.C., supra, that universal service contributions may not exceed interstate revenues. See id. at 434-35. This ensures that telecommunications carriers are treated fairly and equitably, inasmuch as they should not be required to contribute more from their interstate revenues than they earn from such revenues, and inasmuch as one telecommunications carrier should not be harmed more than another if its interstate revenues are particularly low compared to its international revenues. See id. at 435. The FCC must not take any actions that fail to meet such standards. As such, the FCC implemented the Threshold to ensure that the contributions by carriers like BBG would not exceed their interstate revenues.

The Threshold provides a "margin of safety" to account for fluctuations in the contribution factor. See *Federal-State Board on Universal Access Reform*, 64 Fed. Reg. 60349, 60350-51 (November 5, 1999). Accordingly, although BBG supports reform of the contribution system to make it more equitable, under the proposed new system carriers with interstate end-user revenues less than the Threshold should still be granted an exception from having to pay based on a uniform system designed to share the fees among domestic end-user providers.[3]

BBG therefore, proffers that levels of interstate revenue shall be considered relevant in a flat-fee environment. The guiding principle behind the limited international revenue exception, namely to ensure equitable and nondiscriminatory treatment of all carriers, demands that regardless of how contributions are calculated, providers who participate in the interstate market merely to a limited degree should not be at a disadvantage in the marketplace. A number of reasons support maintaining the Threshold even if the FCC modifies the system to require flat fee contributions.

First, imposing such a system without exceptions on carriers engaging primarily in international service, will result in heavy administrative costs to separate the interstate connections, likely outweighing the fees generated. If such providers are forced to assess a fee on each customer account, it would prove difficult and cumbersome to allocate the "per-unit" charge only among the accounts from which interstate calls were placed at any time during the qualifying period. Thus, practically speaking, such providers would be inclined to assess a flat-fee on all of their customers, the vast majority of whom utilize the carrier only for international telecommunications.

Secondly, the Threshold is already well accepted by the telecommunications industry and the FCC as a practical standard to determine whether a carrier is primarily an international telecommunications carrier or interstate carrier. As such, by maintaining such percentage, the FCC will continue to adhere to the principle that carriers that derive a "substantial majority," see *Federal-State Board on Universal*

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[3] See *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43, para. 12 (released February 26, 2002) for a discussion of the blurring of the marketplace because of crossover with interstate/instrastate carriers, mobile telecommunication and bundling of packages. No mention of international telecommunications is cited.

Access Reform, 64 Fed. Reg. 60349, 60350 (November 5, 1999), of their revenues from international services shall not have to contribute to the universal support program fees for their international end-user revenues. The reality of the telecommunications industry is that carriers who fall under the Threshold are, in fact, operating primarily as international telecommunications carriers. As such, since their interstate services contribute to but an ancillary portion of their business such carriers cannot reasonably be deemed to derive a "direct benefit from universal service and should not be assessed fees to support it." Id. As limited carriers in the domestic arena, carriers with de minimis (12% or less) interstate revenues should "receive a financial benefit . . . from providing interstate service," id., rather than being harmed from such activity. Maintaining the Threshold would continue to ensure equitable results by allowing for carriers whose interstate revenues are low in comparison to their overall revenues to continue to offer interstate services to their customers without undue burden or a material disadvantage in the marketplace. Moreover, since the rationale for revising the system is to spread the universal service program fees more evenly among the local, interstate and mobile carriers, there is no reason why international telecommunications carriers should be required to pass the fees on to their customers who are primarily engaged in international calling. See *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43, para. 2 (released February 26, 2002).

Finally, another driving principle behind the Telecommunications Act of 1996 and universal service is the fostering of market competition. The FCC should neither impose barriers to competitive entry into telecommunications markets nor disrupt normal market forces and thereby deprive end-users of the benefits of competition. By imposing the flat-fee on international carriers, without certain exemptions, international carriers may refuse to enter the interstate marketplace. The Threshold will further promote market competition. Without the Threshold, internationally oriented carriers will be discouraged from devoting a nominal percentage of their services to interstate services. Because the limited exception allows for predominantly international carriers to take advantage of the exception, it empowers international carriers to enter interstate markets where they otherwise likely would not or could not have owing to the universal service contributions, thereby increasing the number of market participants and encouraging competition. As long as the FCC keeps the limited international revenue exception percentage at a level that ensures that the exception only applies to carriers whose interstate revenues are but a secondary and ancillary means of revenue, the limited international revenue exception will continue to serve the purpose of allowing carriers who concentrate on international services to enter the interstate market on a trial or limited basis, thereby increasing the number of carriers offering service to customers.

III. Conclusion

BBG submits that even if a flat-fee basis is adopted for universal service contributions, carriers should still utilize the revenue Threshold in order to secure an exception to the general rule. Such a result is the only mechanism consistent with the Section 254(d) requirements. It fosters competition and maintains an equitable and nondiscriminatory marketplace. BBG urges, that if the FCC does indeed begin assessing contributions on a flat-fee basis, those carriers with interstate revenues that are less than the Threshold should not be subject to the proposed flat-fee system.

Dated: March 26, 2002

Respectfully submitted,

BBG COMMUNICATIONS, INC.

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